

ATTACHMENT 1  
HISTORY OF APPLICATION  
FCC CALL SIGN: WNTW782; FCC FILE NO. 712203  
99 BATTERY, NYC

<u>Date Filed</u>	<u>Purpose</u>	<u>Receive Location</u>
2/21/95	Modification to add path *	(1) 61 Broadway
5/4/95	STA to activate path 1 pending FCC action on application *	
7/17/95	Amend application to add paths	(2) Battery Point (3) Liberty Tower * (4) House Tower

\* Covered by attached STA request

° Opposed

Approved by OMB  
3060-0589  
Expires 2/28/97

PAGE NO. 1 OF

USE  
FCC/MELLON JUL 24 1995

FCC USE ONLY

**(Read instructions carefully BEFORE proceeding.)**

(1) FCC ACCOUNT NUMBER	Did you have a number prior to this? Enter it.	(2) TOTAL AMOUNT PAID (dollars and cents)
0   1   3   3   6   9   6   8   0   2		\$ 45 • 00

(3) **PAYOR NAME** (If paying by credit card, enter name exactly as it appears on your card)

cc: Michael J. Lehmkuhl, Esquire  
Pepper & Corazzini, L.L.P.

Liberty Cable Co., Inc.  
(4) STREET ADDRESS LINE NO. 1  
215 East 95th Street, Suite 1A  
(5) STREET ADDRESS LINE NO. 2

1776 K Street, N.W., Suite 200  
Washington, DC 20006  
(202) 296-0600

(6) CITY New York	(7) STATE NY	(8) ZIP CODE 10028	Mc...
(9) DAYTIME TELEPHONE NUMBER (Include area code) (212) 891-7770		(10) COUNTRY CODE (if not U.S.A.) 7-27-	

A) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR					FCC USE ONLY		
(13) FCC CALL SIGN/OTHER ID		(13A) ZIP CODE		(14A) PAYMENT TYPE CODE		(15A) QUANTITY	(16A) FEE DUE FOR PAYMENT TYPE CODE IN BLOCK 14
WNTW782				P	A	O	M
						1	\$45.00
(17A) FCC CODE 1				(18A) FCC CODE 2			
(19A) ADDRESS LINE NO. 1		(20A) ADDRESS LINE NO. 2			(21A) CITY/STATE OR COUNTRY CODE		

(11B) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR					FCC USE ONLY		
(12B) FCC CALL SIGN/OTHER ID		(13B) ZIP CODE		(14B) PAYMENT TYPE CODE		(15B) QUANTITY	(16B) FEE DUE FOR PAYMENT TYPE CODE IN BLOCK 14 \$
				<input type="text"/>	<input type="text"/>		
(17B) FCC CODE 1				(18B) FCC CODE 2			
(19B) ADDRESS LINE NO. 1		(20B) ADDRESS LINE NO. 2			(21B) CITY/STATE OR COUNTRY CODE		

## 007

**MASTERCARD/VISA ACCOUNT NUMBER:**

☐ Mastercard      EXPIRATION DATE:

Visa	Month	Year

(23) I hereby authorize the FCC to charge my VISA or Mastercard

**AUTHORIZED SIGNATURE**

DATE \_\_\_\_\_

07-25-95 0358305 8305540 3 003 22

712203  
WNTW 782  
99 BATTERY

PEPPER & CORAZZINI, L.L.P.  
ATTORNEYS AT LAW  
1776 K STREET, N.W., SUITE 200  
WASHINGTON, D.C. 20006

123

NationsBank of D.C., N.A.

15-120/540

PAY

THE SUM 45 DOLLARS 00

DOLLARS

TO THE  
ORDER OF

Federal Communications Commission

DATE	CHECK NO	AMOUNT
7/18/95	123	45 00

PEPPER & CORAZZINI, L.L.P.  
ATTORNEYS AT LAW

⑈000123⑈ ⑈054001204⑈ 2086049822⑈

⑈000000500⑈



PEPPER & CORAZZINI, L.L.P.  
ATTORNEYS AT LAW  
1776 K STREET, N.W., SUITE 200  
WASHINGTON, D.C. 20006

123

NationsBank of D.C., N.A.

15-120/540

PAY THE SUM 45 DOLLARS 00 DOLLARS

TO THE  
ORDER OF

*Federal Communications Commission*

DATE	CHECK NO.	AMOUNT
7/18/95	123	45 00

PEPPER & CORAZZINI, L.L.P.  
ATTORNEYS AT LAW

⑈000123⑈ ⑆054001204⑆ 2086049822⑈

*Barbara Slayby*

FILE COPY *mc*

7/29/95 STA

July 24, 1995

Federal Communications Commission  
Feeable Correspondence  
P.O. Box 358305  
Pittsburgh, PA 15251-5305

Re: Liberty Cable Co., Inc.;  
Request for Special Temporary Authority  
FCC File No. 708779; FCC Call Sign WNTM385;  
1692 Third Avenue, NYC (Normandie Court)

Dear Sir or Madam:

FCC/MELLON JUL 24 1995

Transmitted herewith, on behalf of Liberty Cable Co., Inc. is an original and one (1) copy of a request for special temporary authority ("STA") for the above referenced facility.

Enclosed is a check made payable to the Federal Communications Commission in the amount of \$45.00 to cover the necessary filing fees.

Questions with respect to this matter should be referred to the undersigned.

Sincerely,



Michael J. Lehmkuhl  
Attorney for  
Liberty Cable Co., Inc.

Enclosures

cc: Arthur H. Harding, Esq.  
(Counsel for Time Warner)

bcc: Larry S. Soloman, Esq.  
Lloyd Constantine, Esq.  
William Kellett, Esq. (FCC)

MJL/kaw  
c:\wp\1808\xsta.13

PEPPER & CORAZZINI, L.L.P.  
ATTORNEYS AT LAW  
1776 K STREET, N.W., SUITE 200  
WASHINGTON, D.C. 20006

125

NationsBank of D.C., N.A.

15-120/540

PAY THE SUM 45 DOLLARS DOLLARS

TO THE  
ORDER OF Federal Communications Commission

DATE	CHECK NO.	AMOUNT	
7/18/95	125	DOLLARS	CENTS
		45	00

PEPPER & CORAZZINI, L.L.P.  
ATTORNEYS AT LAW

*Paula Hoff*

⑈000 125⑈ ⑆05400 1204⑆ 2086049822⑈

FEDERAL COMMUNICATIONS COMMISSION  
**FCC REMITTANCE ADVICE**

Approved by ON  
3060-0589  
Expires 2/28/9

PAGE NO. 1 OF       

(RESERVED)

SPECIAL USE

FCC USE ONLY

(Read instructions carefully BEFORE proceeding.)

**PAYOR INFORMATION**

(1) FCC ACCOUNT NUMBER	Did you have a number prior to this? Enter it.	(2) TOTAL AMOUNT PAID (dollars and cents)
0133696802		\$ 45.00
(3) PAYOR NAME (If paying by credit card, enter name exactly as it appears on your card)		
Liberty Cable Co., Inc.		
cc: Michael J. Lehmkuhl, Esquire Pepper & Corazzini, L.L.P.		
(4) STREET ADDRESS LINE NO. 1	1776 K Street, N.W., Suite 200	
215 East 95th Street, Suite 1A	Washington, DC 20006	
(5) STREET ADDRESS LINE NO. 2	(202) 296-0600	
(6) CITY	(7) STATE	(8) ZIP CODE
New York	NY	10028
(9) DAYTIME TELEPHONE NUMBER (Include area code)	(10) COUNTRY CODE (if not U.S.A.)	
(212) 891-7770		

**ITEM #1 INFORMATION**

(11A) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR				FCC USE ONLY	
(12A) FCC CALL SIGN/OTHER ID	(13A) ZIP CODE	(14A) PAYMENT TYPE CODE		(15A) QUANTITY	(16A) FEE DUE FOR PAYMENT TYPE CODE IN BLOCK 14
WNTM385		P A O M		1	\$ 45.00
(17A) FCC CODE 1		(18A) FCC CODE 2			
(19A) ADDRESS LINE NO. 1	(20A) ADDRESS LINE NO. 2		(21A) CITY/STATE OR COUNTRY CODE		

**ITEM #2 INFORMATION**

(11B) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR				FCC USE ONLY	
(12B) FCC CALL SIGN/OTHER ID	(13B) ZIP CODE	(14B) PAYMENT TYPE CODE		(15B) QUANTITY	(16B) FEE DUE FOR PAYMENT TYPE CODE IN BLOCK 14
					\$
(17B) FCC CODE 1		(18B) FCC CODE 2			
(19B) ADDRESS LINE NO. 1	(20B) ADDRESS LINE NO. 2		(21B) CITY/STATE OR COUNTRY CODE		

**CREDIT CARD PAYMENT INFORMATION**

013

(22) **MASTERCARD/VISA ACCOUNT NUMBER:**

☐ Mastercard ☐ Visa

EXPIRATION DATE:

Month Year

(23) I hereby authorize the FCC to charge my VISA or Mastercard

AUTHORIZED SIGNATURE DATE



**Special Temporary Authority**  
**FCC File No. 708779**  
**FCC Call Sign WNTM385**

Liberty Cable Co. ("Liberty") respectfully requests special temporary authority ("STA") pursuant to Section 94.43 of the Commission's rules to operate an 18 Ghz operational-fixed microwave service ("OFS") station at 1692 Third Avenue, NYC (Normandie Court) in the manner described below. Given the extraordinary circumstances regarding the need for service, any delay in the institution of temporary operation would seriously prejudice the public interest.

Pursuant to Section 94.43(c) of the Commission's rules, the following is submitted:

**1. Name, Address and Citizenship of Applicant**

Liberty Cable Co., Inc.  
215 E. 95th Street  
New York, NY 10128  
ATTN: Behrooz Nourain

**2. Need for Special Action**

Liberty is an alternative multichannel video programming distributor serving approximately 30,000 subscribers who live mainly in buildings in the New York metropolitan area. In the vast majority of cases, Liberty provides service pursuant to the Commission's action in Operational Fixed Microwave Service (Video Distribution System), 6 FCC Rcd. 1270 (1991) ("the 18 GHz Order") through microwave channels in the 18,142 - 18,580 band ("the 18 GHz band").

From November 7, 1994 through June 21, 1995, Liberty applied to add nine new paths to its existing 18 GHz station, WNTM385, located at Normandie Court. These paths are included under FCC File No. 708779, which remain pending. Requests for STA also are on file for these new paths (see, Attachment 1).

As Liberty previously has disclosed to the Commission, it recently initiated a thorough review of its internal licensing procedures and regulatory compliance. That review, which is still underway but rapidly nearing completion, disclosed that two additional new paths (from the existing WNTM385 transmitter to East 85th Street via repeater at 38 E. 85th and to East 92nd Street) had been activated before the company had filed for or received FCC authorization for the necessary license modifications. Accordingly, Liberty promptly modified pending application 708779 to add the two paths in question.<sup>1</sup>

The instant STA request also covers a third path, from the WNTM385 transmitter to 44 West 96th Street (via repeater at 12 W.

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<sup>1</sup> The recent amendment also proposes the addition of five other paths that are not involved in the instant request for STA.

96th Street). Liberty's programming currently is delivered to 44 West 96th via hardwire connection from a non-commonly owned, managed or controlled building located at 12 West 96th Street. Grant of the instant request also will permit the expeditious conversion of this connection to microwave and will enable Liberty to discontinue the hardwire connection.

This request for STA is being filed so that Liberty can continue to use the paths pending FCC action on the underlying applications. Grant of the instant request will permit Liberty to honor its obligations to its customers and will support the establishment of effective competition in the Manhattan video delivery market.

When the 18 GHz Order granted private cable operators access to the 18 GHz band, the Commission voiced its conviction that the public interest was well served by allowing competition in the video services marketplace through wireless cable operators. The Commission said:

After carefully reviewing the record, we conclude that adoption of this proposal, ..., will promote the public interest by encouraging competition in the video distribution marketplace. The need for such action is well documented. This Commission recently conducted a review of marketplace developments in the video distribution industry in which we concluded that cable systems possess a disproportionate share of market power and, therefore, are capable of engaging in anti-competitive conduct. In these circumstances, competition provides the most effective safeguard against the specter of market power abuse. As competition from alternative multichannel providers such as second competitive cable operators, wireless cable multi-pinpoint distribution services, SMATV systems, and direct broadcast satellite ("DBS") emerges, we find that it would serve the public interest to enhance their competitive potential. 6 FCC Rcd. at 1271, para. 9.

The Commission also said:

In conclusion, cable systems increasingly dominate the multichannel video delivery services, resulting in criticism of the industry and complaints of anti-competitive conduct. Although rival multichannel providers are emerging in the marketplace, we recognize the need for action designed to encourage these operators to enter the marketplace and to increase their market viability. To improve the competitive potential of alternative multichannel providers eligible to hold licenses in the Operation-Fixed Microwave Service, we take action in this proceeding permitting the use of the 6 MHz wide, point-to-point channels in the 18 GHz band for the distribution of video entertainment material. 6 FCC Rcd. at 1272, para. 16.

Furthermore, in its 1994 report to Congress on the status of competition in this marketplace, the Commission makes clear that little has changed in the way of competition; cable is still king. In sum, the public interest is well served by the promotion of competition by wireless cable operators in the video services marketplace.

The Commission action in opening the 18 GHz band to wireless cable operators has achieved its goal in that it has stimulated competition to incumbent cable monopolists. Liberty is competing head-to-head with Time Warner in Manhattan using this 18 GHz band. To compete effectively with Time Warner, Liberty must be allowed to continue its service to subscribers in those buildings which have elected to switch from Time Warner to Liberty. While this in no way justifies the premature activation of additional microwave paths in this instance, if Liberty cannot meet its customers' demand for service, those potential customers will cancel their contracts with Liberty and remain with Time Warner. The effect will also immeasurably damage Liberty's business and reputation.

Time Warner realizes that denial or even delay of the underlying application -- 708799 -- which seeks authorization of service paths to new Liberty customers will effectively eliminate Liberty as Time Warner's only significant competition in this market. Thus, Time Warner has filed a petition to deny grant of the aforesaid application and in doing so, has effectively thwarted Liberty from obtaining FCC authority to expand its business.

In this regard, Liberty believes that the Commission must strike a balance between Time Warner's right to be heard on its objections with the public's right to receive service in a timely manner and the public's right to the lower prices which competition brings. Liberty believes that such a balance can be struck if the Commission grants the instant STA subject to the Commission's decision on the Time Warner petition to deny the underlying application. Since Liberty's application is in technical order (including clearance of the paths by a frequency coordinator) and Time Warner has not challenged Liberty's applications on a technical basis, and since the grant of the STA requested herein will not prejudice in any way Time Warner's right to be heard on its objections to the Liberty application or the Commission's ability to decide the petition to deny, Liberty respectfully requests immediate grant of this STA as requested herein.

### 3-5. Type, Purpose and Time of Operation

Fixed transmission of video and audio signals in the 18 GHz band. The equipment will be used to distribute applicant's own products or services, including video entertainment programming, to private cable buildings on frequencies in the 18,142 - 18,580 MHz band. Liberty requests authority for twenty-four (24) hour operation pending action on the application for license and requests that such authority begin on the tenth day following the filing of this request for special temporary authority.

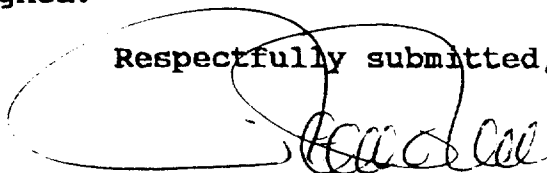
**6-12. Technical Information**

Liberty will operate the station in conformance with the technical specifications outlined in the referenced application(s).

Liberty certifies that no party to the application is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, codified at 21 U.S.C. Section 862.

Please address all correspondence regarding this matter to Liberty's counsel, Michael J. Lehmkuhl, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, N.W., Suite 200, Washington, D.C. 20006 as well as the undersigned.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Peter O. Price", is written over a horizontal line. The signature is stylized with a large, looping initial "P".

Peter O. Price  
President  
Liberty Cable Co., Inc.

Date: 7/17/95

**ATTACHMENT 1**  
**HISTORY OF APPLICATION**  
**FCC CALL SIGN: WNTM385; FCC FILE NO. 708799**  
**1692 THIRD AVENUE (NORMANDIE COURT)**

<u>Date Filed</u>	<u>Purpose</u>	<u>Receive Location</u>
11/7/94	Modify license to add paths °	(1) 44 W. 96th (2) 120 East End (3) 525 E. 86th (4) 767 Fifth Avenue
2/21/95	Amend application to add path	(5) 441 E. 92nd (aka 1775 York Ave., "The Brittany")
5/4/95	STA to activate new paths 1-5 pending FCC action on application (708799), as amended °	
5/23/95	Amend application to add path	(6) 1185 Park Avenue
6/21/95	Amend application to add paths	(7) REPEATER 510 E. 86th Street (8) RX 120 East End (9) 400 Central Park West
7/12/95	STA to activate new paths 6-9 pending FCC action on application (708799), as amended °	
	Amend application to add path	(10) RX 44 W. 96th St. *

° Opposed

RX = Through a repeater

7/17/95

Amend application to  
add paths

(11) 1310 Madison Ave.

(12) 1036 Park Avenue

(13) RX E. 85th St. \*

(14) REPEATER  
38 E. 85th St.

(15) E. 86th St.

(16) E. 92nd St. \*

(17) E. 93rd St.

\* Covered by attached STA request

RX = Through a repeater

FILE COPY

July 24, 1995

Federal Communications Commission  
Feeable Correspondence  
P.O. Box 358305  
Pittsburgh, PA 15251-5305

**FCC/MELLON JUL 24 1995**      **Re: Liberty Cable Co., Inc.;**  
   **Request for Special Temporary Authority**  
   **FCC File No. 711937; FCC Call Sign WNTM212;**  
   **205 East 64th Street, NYC (Bristol Plaza)**

Dear Sir or Madam:

Transmitted herewith, on behalf of Liberty Cable Co., Inc. is an original and one (1) copy of a request for special temporary authority ("STA") for the above referenced facility.

Enclosed is a check made payable to the Federal Communications Commission in the amount of \$45.00 to cover the necessary filing fees.

Questions with respect to this matter should be referred to the undersigned.

Sincerely,



Michael J. Lehmkuhl  
Attorney for  
Liberty Cable Co., Inc.

Enclosures

cc: Arthur H. Harding, Esq.  
      (Counsel for Time Warner)

bcc: Larry S. Soloman, Esq.  
      Lloyd Constantine, Esq.  
      William Kellett, Esq. (FCC)

MJL/kaw  
c:\wp\1808\xsta.14

PEPPER & CORAZZINI, L.L.P.  
ATTORNEYS AT LAW  
1776 K STREET, N.W., SUITE 200  
WASHINGTON, D.C. 20006

122

NationsBank of D.C., N.A.

15-120/540

PAY THE SUM 45 DOLS 00 DOLLARS

TO THE  
ORDER OF Federal Communications Commission

DATE	CHECK NO.	AMOUNT	
7/18/95	122	DOLLARS	CENTS
		45	00

PEPPER & CORAZZINI, L.L.P.  
ATTORNEYS AT LAW

*Barbara Haynes*

⑈000 1 2 2⑈ ⑆05400 1 204⑆ 20860498 2 2⑈



FEDERAL COMMUNICATIONS COMMISSION  
**FCC REMITTANCE ADVICE**

Approved by OMB  
3060-0589  
Expires 2/28/97

PAGE NO. 1 OF       

(RESERVED)

SPECIAL USE

FCC USE ONLY

(Read instructions carefully BEFORE proceeding.)

**PAYOR INFORMATION**

(1) FCC ACCOUNT NUMBER      Did you have a number prior to this? Enter it.      (2) TOTAL AMOUNT PAID (dollars and cents)  
0 | 1 | 3 | 3 | 6 | 9 | 6 | 8 | 0 | 2 |      \$      45 • 00

(3) PAYOR NAME (If paying by credit card, enter name exactly as it appears on your card)

Liberty Cable Co., Inc.

cc: Michael J. Lehmkuhl, Esquire  
Pepper & Corazzini, L.L.P.

(4) STREET ADDRESS LINE NO. 1

215 East 95th Street, Suite 1A

1776 K Street, N.W., Suite 200  
Washington, DC 20006

(5) STREET ADDRESS LINE NO. 2

(202) 296-0600

(6) CITY

New York

(7) STATE

NY

(8) ZIP CODE

10028

(9) DAYTIME TELEPHONE NUMBER (Include area code)

(212) 891-7770

(10) COUNTRY CODE (if not U.S.A.)

**ITEM #1 INFORMATION**

(11) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR

FCC USE ONLY

(12A) FCC CALL SIGN/OTHER ID

WNTM212

(13A) ZIP CODE

(14A) PAYMENT TYPE CODE

P    A    O    M

(15A) QUANTITY

1

(16A) FEE DUE FOR  
PAYMENT TYPE CODE  
IN BLOCK 14  
\$ 45.00

(17A) FCC CODE 1

(18A) FCC CODE 2

(19A) ADDRESS LINE NO. 1

(20A) ADDRESS LINE NO. 2

(21A) CITY/STATE OR COUNTRY CODE

**ITEM #2 INFORMATION**

(11B) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR

FCC USE ONLY

(12B) FCC CALL SIGN/OTHER ID

(13B) ZIP CODE

(14B) PAYMENT TYPE CODE

(15B) QUANTITY

(16B) FEE DUE FOR  
PAYMENT TYPE CODE  
IN BLOCK 14  
\$

(17B) FCC CODE 1

(18B) FCC CODE 2

(19B) ADDRESS LINE NO. 1

(20B) ADDRESS LINE NO. 2

(21B) CITY/STATE OR COUNTRY CODE

**CREDIT CARD PAYMENT INFORMATION**

MASTERCARD/VISA ACCOUNT NUMBER:

☐ Mastercard

EXPIRATION DATE:

☐ Visa

Month Year

AUTHORIZED SIGNATURE

DATE

022

**Special Temporary Authority**  
**FCC File No. 711937**  
**FCC Call Sign WNTM212**

Liberty Cable Co. ("Liberty") respectfully requests special temporary authority ("STA") pursuant to Section 94.43 of the Commission's rules to operate an 18 GHz operational-fixed microwave service ("OFS") station at 205 East 64th Street, NYC (Bristol Plaza) in the manner described below. Given the extraordinary circumstances regarding the need for service, any delay in the institution of temporary operation would seriously prejudice the public interest.

Pursuant to Section 94.43(c) of the Commission's rules, the following is submitted:

**1. Name, Address and Citizenship of Applicant**

Liberty Cable Co., Inc.  
215 E. 95th Street  
New York, NY 10128  
ATTN: Behrooz Nourain

**2. Need for Special Action**

Liberty is an alternative multichannel video programming distributor serving approximately 30,000 subscribers who live mainly in buildings in the New York metropolitan area. In the vast majority of cases, Liberty provides service pursuant to the Commission's action in Operational Fixed Microwave Service (Video Distribution System), 6 FCC Rcd. 1270 (1991) ("the 18 GHz Order") through microwave channels in the 18,142 - 18,580 band ("the 18 GHz band").

From January 31, 1994 through May 23, 1995, Liberty applied to add three new paths to its existing 18 GHz station, WNTM212, located at Bristol Plaza included under FCC File No. 711937, which remains pending.<sup>1</sup> Requests for STA also are on file for these new paths (see, Attachment 1).

As Liberty previously has disclosed to the Commission, it recently initiated a thorough review of its internal licensing procedures and regulatory compliance. That review, which is still underway but rapidly nearing completion, disclosed that one additional new path (from the existing WNTM212 transmitter to East 56th Street) had been activated before the company had filed for or received FCC authorization for the necessary license modifications. Accordingly, Liberty promptly modified pending application 711937 to add the path in question.<sup>2</sup>

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<sup>1</sup> On November 7, 1994 and November 23, 1994, a total of five new paths from WNTM212 were filed and have since been pending under FCC File Nos. 709426 and 708781. These paths are not a part of this STA request.

<sup>2</sup> The recent amendment also proposes the addition of two other paths that are not involved in the instant request for STA.

The instant STA request also covers a second path, from the WNTM212 transmitter to 303 East 57th Street. This second path was contracted for on May 6, 1995. According to the terms of the installation contract, Liberty must deliver service within 120 days-- September 3, 1995-- or face cancellation of its service. The date is fast approaching and Liberty has no assurances that it will be able to provide service by the September 3 deadline. A series of occurrences where Liberty fails to deliver its service in accordance with contractual requirements or where potential customers cancel their subscriptions to Liberty's service will immeasurably damage Liberty's business and reputation.

This request for STA is being filed so that Liberty can use the paths pending FCC action on the underlying application. Grant of the instant request will permit Liberty to honor its obligations to its customers and will support the establishment of effective competition in the Manhattan video delivery market.

When the 18 GHz Order granted private cable operators access to the 18 GHz band, the Commission voiced its conviction that the public interest was well served by allowing competition in the video services marketplace through wireless cable operators. The Commission said:

After carefully reviewing the record, we conclude that adoption of this proposal, ..., will promote the public interest by encouraging competition in the video distribution marketplace. The need for such action is well documented. This Commission recently conducted a review of marketplace developments in the video distribution industry in which we concluded that cable systems possess a disproportionate share of market power and, therefore, are capable of engaging in anti-competitive conduct. In these circumstances, competition provides the most effective safeguard against the specter of market power abuse. As competition from alternative multichannel providers such as second competitive cable operators, wireless cable multi-pinpoint distribution services, SMATV systems, and direct broadcast satellite ("DBS") emerges, we find that it would serve the public interest to enhance their competitive potential. 6 FCC Rcd. at 1271, para. 9.

The Commission also said:

In conclusion, cable systems increasingly dominate the multichannel video delivery services, resulting in criticism of the industry and complaints of anti-competitive conduct. Although rival multichannel providers are emerging in the marketplace, we recognize the need for action designed to encourage these operators to enter the marketplace and to increase their market viability. To improve the competitive potential of alternative multi-channel providers eligible to hold licenses in the Operation-Fixed Microwave Service, we take action in this proceeding permitting the use of the 6 MHz wide, point-to-point channels in the 18 GHz band for the distribution of video entertainment material. 6 FCC Rcd. at 1272, para. 16.

Furthermore, in its 1994 report to Congress on the status of competition in this marketplace, the Commission makes clear that little has changed in the way of competition; cable is still king. In sum, the public interest is well served by the promotion of competition by wireless cable operators in the video services marketplace.

The Commission action in opening the 18 GHz band to wireless cable operators has achieved its goal in that it has stimulated competition to incumbent cable monopolists. Liberty is competing head-to-head with Time Warner in Manhattan using this 18 GHz band. To compete effectively with Time Warner, Liberty must be allowed to continue its service to subscribers in those buildings which have elected to switch from Time Warner to Liberty. While this in no way justifies the premature activation of additional microwave paths in this instance, if Liberty cannot meet its customers' demand for service, those potential customers will cancel their contracts with Liberty and remain with Time Warner. The effect will also immeasurably damage Liberty's business and reputation.

Time Warner realizes that denial or even delay of the underlying application -- 711937 -- which seeks authorization of service paths to new Liberty customers will effectively eliminate Liberty as Time Warner's only significant competition in this market. Thus, Time Warner has filed a petition to deny grant of the aforesaid application and in doing so, has effectively thwarted Liberty from obtaining FCC authority to expand its business.

In this regard, Liberty believes that the Commission must strike a balance between Time Warner's right to be heard on its objections with the public's right to receive service in a timely manner and the public's right to the lower prices which competition brings. Liberty believes that such a balance can be struck if the Commission grants the instant STA subject to the Commission's decision on the Time Warner petition to deny the underlying application. Since Liberty's application is in technical order (including clearance of the paths by a frequency coordinator) and Time Warner has not challenged Liberty's applications on a technical basis, and since the grant of the STA requested herein will not prejudice in any way Time Warner's right to be heard on its objections to the Liberty application or the Commission's ability to decide the petition to deny, Liberty respectfully requests immediate grant of this STA as requested herein.

### 3-5. Type, Purpose and Date of Operation

Fixed transmission of video and audio signals in the 18 GHz band. The equipment will be used to distribute applicant's own products or services, including video entertainment programming, to private cable buildings on frequencies in the 18,142 - 18,580 MHz band. Liberty requests authority for twenty-four (24) hour operation pending action on the application for license and requests that such authority begin on the tenth day following the filing of this request for special temporary authority.

**6-12. Technical Information**

Liberty will operate the station in conformance with the technical specifications outlined in the referenced application(s).

Liberty certifies that no party to the application is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, codified at 21 U.S.C. Section 862.

Please address all correspondence regarding this matter to Liberty's counsel, Michael J. Lehmkuhl, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, N.W., Suite 200, Washington, D.C. 20006 as well as the undersigned.

Respectfully submitted,



Peter O. Price  
President  
Liberty Cable Co., Inc.

Date: 7/17/95

**ATTACHMENT 1**  
**HISTORY OF APPLICATION**  
**FCC CALL SIGN: WNTM212; FCC FILE NO. 711937**  
**205 EAST 64TH STREET, NYC (BRISTOL PLAZA)**

<u>Date Filed</u>	<u>Purpose</u>	<u>Receive Location</u>
✓ 1/31/95	Modify license to add paths °	(1) 433 E. 56th St.
/ 2/21/95	Amend application to add path	(2) 30 Waterside
✓ 5/4/95	STA to activate new paths 1 and 2 pending FCC action on application (711937), as amended °	
✓ 5/23/95	Amend application to add new path	(3) 590 Madison Ave.
7/12/95	STA to activate new path 3 pending FCC action on application. °	
7/12/95	Amend application to add path	(4) 303 E. 57th St. *
7/17/95	Amend application to add path	(5) East 56th St. * (6) 20 Sutton Place (7) Sutton Place South

\* Covered by attached STA request

° Opposed



Post-It Fax Note 7672

To Art Harding  
Company  
Location

No. of Pages 2

Today's Date 8-10-95 Time 5:14 PM

From Howard Davenport  
Company FCC WTBI/ENF  
Location  
Dept. Charge

Fax # 202-745-0916 Telephone # 202-637-9049 Fax # 202-418-2644 Telephone # 202-418-0585



Federal Communications Commission  
Washington, DC, 20554

In Reply Refer To:  
95M003

Howard J. Barr, Esquire  
Pepper & Corazzini  
Suite 200  
1776 K St., N.W.  
Washington, DC 20006

Henry Rivera, Esquire  
Larry Solomon, Esquire  
Ginsburg, Feldman and Bress  
1250 Connecticut Ave., N.W.  
Washington, DC 20036

Robert L. Petit, Esquire  
Wiley Rein and Fielding  
1776 K St., N.W.  
Washington, DC 20006

Re: Liberty Cable Co. Pending Requests for Special Temporary Authority

Dear Counsel:

During the pendency of our review of this matter, Liberty Cable Co. ("Liberty") has disclosed four additional instances in which it activated microwave OFS paths prior to filing for or receiving proper authorization from the Federal Communications Commission. See, Request for Special Temporary Authority, FCC File Nos. 711937 (Call Sign WNTM212), 712203 (Call Sign WNTW782) and 708779 (Call Sign WNTM385), dated July 24, 1995. This unauthorized construction and operation appears to be in addition to the 15 OFS paths Liberty admitted to constructing and operating without authority in its Surreply dated May 17, 1995. Liberty states that it has nearly completed a thorough review of its internal licensing procedures and regulatory compliance.

This letter directs Liberty to submit to the Commission the results of its recently conducted internal audit. Specifically, this report shall list all of the OFS paths which Liberty has constructed and/or operated without authority. This list shall indicate which of these unauthorized paths were not disclosed to the Commission in response to its letter of June 12, 1995. Liberty is also directed to provide the date each unauthorized path was constructed and placed in operation and the number of subscribers currently being served by each new path. Finally, Liberty shall indicate whether it is charging subscribers for service received via these unauthorized paths. Liberty's response should be in the form of a further written statement of fact attested to in accordance with 47 C.F.R. § 1.17.

Federal Communications Commission	
Date	9641 28
By	TUCV
Identified	<input checked="" type="checkbox"/>
Received	<input checked="" type="checkbox"/>
Rejected	<input type="checkbox"/>
Reporter	<i>[Signature]</i>



Howard J. Barr, Esq.  
August 4, 1995  
Page 2

Pursuant to the authority granted to the Commission by 47 U.S.C. § 308(b), Liberty is directed to respond within five days of the date of this letter. Liberty should direct its response to the Chief of the Wireless Telecommunications Bureau and it should serve a copy on Time Warner. Time Warner shall have three business days thereafter to submit a response. Upon a receipt of the responses, the Enforcement Division will decide immediately whether a meeting of Liberty, Time Warner and the Enforcement Division is necessary to resolve this matter expeditiously. If you have any questions regarding this matter, please direct your inquiries to the undersigned at (202) 418-0585.

Sincerely,



Howard C. Davenport  
Chief, Enforcement Division  
Wireless Telecommunications Bureau

cc: Arthur H. Harding, Esq.